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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,540	07/13/2001	Michael Dean McCutchan	8169M	3927

27752 7590 01/07/2005

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/905,540

Applicant(s)

MCCUTCHAN, MICHAEL DEAN

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/1/2001</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Appeal Brief

1. In view of the Appeal Brief filed on October 19, 2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below. Any inconvenience is sincerely regretted.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Information Disclosure Statement

2. The information disclosure statement filed October 1, 2001 will be considered and the respective dates of the samples will be assumed to be at least before the filing date of applicant's provisional application as disclosed by applicant on page 4 of the Appeal Brief filed October 19, 2004; and also due to their inclusion in Applicant's Admitted Prior Art listed on page 6, Table 1 of applicant's specification.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 5-6, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pringles [potato chip container] in view of Snack-a-Dip [sample from IDS filed 10/01/2001, as well as applicant's admitted prior art on page 6 of the specification, Table 1].

Pringles teaches a kit comprising a canister filled with nested snack pieces, the snack pieces having a surface area of about 2827 mm², a space efficiency of 0.163 g/cm³, and the canister having a sidewall, bottom wall, top opening, and a removable lid (see sample). Pringles does not disclose an attached tub containing a dip condiment (claims 1 & 17), and a snack piece to dip ratio of less than about 2 (claims 3 & 17). Snack-a-Dip teaches a kit comprising a canister containing a plurality of snack pieces, an attached tub containing a dip condiment, the kit having a space efficiency of 0.134 g/cm³, the canister having a sidewall, bottom wall, and top opening; a snack piece to dip ratio of 1.5; and a removable lid. It would have been obvious to one of ordinary skill in the art to incorporate the tub and dip of Snack-a-Dip into the kit of Pringles since both are directed to chip containers, since Pringles chips were commonly eaten with dip, since it was commonly known to provide a tub of dip within the canister as shown by Snack-a-

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Dip, and since providing the dip with the chips of Pringles would have provided added convenience to the consumer by eliminating the need to purchase a separate tub of dip. Regarding claim 18, it would have been obvious to one of ordinary skill in the art to further increase the space efficiency of Pringles, in view of Snack-a-Dip, to at least 0.2 g/cm^3 since kits comprising snack pieces and dip commonly exceeded this level of space efficiency as evidenced by applicant's admitted prior art (page 7 of the specification, Table 1, Oscar Mayer Lunchables Cheesy Chip Nachos having a space efficiency of 0.308), and since an even higher space efficiency would have further reduced shipping and storage costs by providing a higher ratio of product per container, and thus reduced the amount of packaging materials needed.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pringles, in view of Snack-a-Dip, as applied above, and further in view of Bezek et al [Pat. No. 6,596,328].

Pringles and Snack-a-Dip teach the above mentioned components. Pringles and Snack-a-Dip do not teach a triangular shaped kit. Bezek et al also teaches a kit comprising a triangular canister containing nested chips (column 6, line 41). It would have been obvious to one of ordinary skill in the art to incorporate the triangular shape of Bezek et al into the kit of Pringles, in view of Snack-a-Dip, since all are directed to chip containers, since Snack-a-Dip already included triangular tortilla chips, since triangular shaped canisters were commonly used for chip containers as shown by Bezek et al (column 7, line 16), since the triangular shape of Bezek et al would have provided a more efficient package for triangular chips by eliminating unneeded packaging materials

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and unusable space, as compared to the circular container of Snack-a-Dip, and since a triangular shaped canister would have been easier to grip in one's hand.

6. Claims 1, 3, 5-6, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snack-a-Dip [sample from IDS filed 10/01/2001, as well as applicant's admitted prior art on page 6 of the specification, Table 1] in view of Bezek et al and Doritos Dippas Chips & Salsa [Applicant's Admitted Prior Art, page 6, Table 1 of the specification).

Snack-a-Dip teaches a kit comprising a canister containing a plurality of snack pieces, an attached tub containing a dip condiment, the kit having a space efficiency of 0.134 g/cm^3 , the canister having a sidewall, bottom wall, and top opening; a snack piece to dip ratio of 1.5; and a removable lid. Snack-a-Dip does not disclose snack pieces with an area of 1,900 to 10,000 mm^2 (claims 1 & 17), a space efficiency greater than about 0.15 g/cm^3 (claims 1 & 17), a space efficiency greater than 0.2 g/cm^3 (claim 18), a triangular shaped kit (claim 20), and the snack pieces being nested (claim 5). Bezek et al teach a kit comprising a triangular canister with nested snack pieces (column 6, line 41). Doritos Dippas teaches a kit comprising snack pieces with an area of 3700 mm^2 (Applicant's Admitted Prior Art, page 6, Table 1 of the specification). It would have been obvious to one of ordinary skill in the art to incorporate the snack piece size of Doritos Dippas into the invention of Snack-a-Dip since both are directed to chip and dip kits, since Snack-a-Dip already included chips, and since the larger chips of Doritos Dippas Chips & Salsa would have provided a larger area to grip the chip and thus reduce the chance of getting dip on one's fingers. It would have been obvious to one of ordinary skill in the art to

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incorporate the triangular canister and nested chips of Bezek et al into the kit of Snack-a-Dip, in view of Doritos Dippas, since all are directed to kits containing snack pieces, since Snack-a-Dip already included triangular tortilla chips, since triangular shaped canisters were commonly used for chip containers as shown by Bezek et al (column 6, line 41) and helped prevent chip breakage during transport, since nesting the triangular chips of Snack-a-Dip within the triangular canister of Bezek et al, in combination with the larger chip size of Doritos Dippas, would have provided an increased space efficiency by providing more product per container while also reducing the package volume as compared to the circular canister of Snack-a-Dip, and since a higher space efficiency would have reduced shipping and storage costs by providing a higher ratio of product per container, and thus reduced the amount of packaging materials needed. Regarding claim 18, it would have been obvious to one of ordinary skill in the art to further increase the space efficiency of Snack-a-Dip, in view of Bezek et al and Doritos Dippas, to at least 0.2 g/cm^3 since kits comprising snack pieces and dip commonly exceeded this level of space efficiency as evidenced by applicant's admitted prior art (page 7 of the specification, Table 1, Oscar Mayer Lunchables Cheesy Chip Nachos having a space efficiency of 0.308), and since an even higher space efficiency would have further reduced shipping and storage costs by providing a higher ratio of product per container, and thus reduced the amount of packaging materials needed.

7. Claims 1, 3, 5-6, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al [US 2002/0122852 A1] in view of Snack-a-Dip

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[sample from IDS filed 10/01/2001, as well as applicant's admitted prior art on page 6 of the specification, Table 1].

Zimmerman et al teach a kit comprising triangular chips having a length of 110mm and a width of 110mm which producing an area of about 6000 mm² (page 5, paragraph 0048), a packed bulk density of 0.1-0.35 g/cm³ (page 10, claim 14), a triangular canister having a sidewall, bottom wall, and top opening (Figure 7), and the chips being nested (page 10, claim 2). Zimmerman et al do not recite a tub with dip (claims 1 & 17), a snack piece to dip ratio of less than about 2 (claims 3 & 17), and a lid (claim 19). Snack-a-Dip teaches a kit comprising a canister containing a plurality of snack pieces, an attached tub containing a dip condiment, a snack piece to dip ratio of 1.5; and a removable lid (see sample). It would have been obvious to one of ordinary skill in the art to incorporate the lid, and tub with dip of Snack-a-Dip into the kit of Zimmerman et al since both are directed to chip containers, since the chips of Zimmerman et al were commonly eaten with dip, since it was commonly known to provide a tub of dip within the canister as shown by Snack-a-Dip, and since providing the dip with the chips of Zimmerman et al would have provided added convenience to the consumer by eliminating the need to purchase a separate tub of dip.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zimmerman et al [US 2002/172748 A1] and Teras et al [US 2002/0132029A1] both teach kits comprising triangular chips in canisters.

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Response to Arguments


9. Applicant's arguments with respect to claims 1, 3, 5-6, and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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